

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA

Case No. 2:14-cr-00357-APG-NJK

Plaintiff:

**ORDER GRANTING FEDERAL
INSURANCE COMPANY'S MOTION
FOR RETURN OF PROPERTY**

BRIAN WRIGHT,

[ECF No. 509]

Defendant.

When Brian Wright was arrested on February 10, 2017, officers seized \$40,000 in cash had been stuffed into a mattress box spring. Authorities believed the cash was stolen during robbery of the Silverton Race and Sports Book, although Wright was never charged with that

Wright later moved for return of the money under Federal Rule of Criminal Procedure 41(g). The Government opposed and Magistrate Judge Ferenbach conducted an evidentiary hearing. ECF No. 473. At the hearing, Wright was represented by counsel, testified, and challenged the Government's evidence. *Id.* Judge Ferenbach eventually found that the Government had

proven by a preponderance of the evidence that the \$40,000 belongs to the Silverton Sportsbook (sic) and not to Wright. The government represented at the hearing that the \$40,000 would be returned to the Silverton's insurance company if the Court determines that Wright is not the owner of the property. The government's evidence that the \$40,000 is proceeds from the Silverton robbery is reasonable under all the circumstances and the government has proven a legitimate reason for retaining the \$40,000 as contraband.

22 ECF No. 478 at 7-8. I accepted Judge Ferenbach's findings, conclusions, and recommendations
23 (ECF No. 485), and the Ninth Circuit affirmed (ECF No. 503).

1 The owner of the Silverton Race and Sports Book assigned the right to recover the
2 robbery proceeds to its insurer, Federal Insurance Company. Federal now moves for return of
3 the cash under Rule 41(g). ECF No. 509. The Government does not oppose Federal's motion
4 (ECF No. 510) but Wright does (ECF No. 511).

5 "[D]istrict courts have the power to entertain motions to return property seized by the
6 government when there are no criminal proceedings pending against the movant. . . . These
7 motions are treated as civil equitable proceedings and, therefore, a district court must exercise
8 caution and restraint before assuming jurisdiction." *Ramsden v. United States*, 2 F.3d 322, 324
9 (9th Cir. 1993) (simplified). The *Ramsden* court identified four factors district courts should
10 consider in addressing a Rule 41(g) motion where the movant has not been indicted:

11 1) whether the Government displayed a callous disregard for the constitutional rights of
12 the movant;

13 2) whether the movant has an individual interest in and need for the property he wants
14 returned;

15 3) whether the movant would be irreparably injured by denying return of the property;
16 and

17 4) whether the movant has an adequate remedy at law for the redress of his grievance.

18 *Id.* at 325. These factors favor assuming jurisdiction and returning the money to Federal.

19 As Magistrate Judge Ferenbach concluded, the \$40,000 belongs to the Silverton Race and
20 Sports Book and not to Wright. ECF No. 478 at 7. I see no reason (and Wright offers none) to
21 disregard the results of that evidentiary hearing. Federal clearly has an interest in and need for
22 the stolen money.

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1 The Government has not disregarded Federal's constitutional rights, but the Government
2 does not intend to conduct—and believes it cannot now conduct—a forfeiture proceeding to
3 resolve who gets the money. *See* ECF No. 509-4 at 2. Thus, Federal has no effective, efficient,
4 or adequate remedy at law to recover the stolen funds other than to move under Rule 41(g). And
5 if it is not able to recover the funds in this fashion, it will be irreparably injured. Thus, the
6 *Ramsden* factors favor returning the funds to Federal.

7 I THEREFORE ORDER that Federal Insurance Company's motion for return of property
8 (**ECF No. 509**) is granted. I order the United States to transfer to Federal Insurance Company
9 the \$40,000 in cash that was seized in connection with the arrest of Brian Wright on February 10,
10 2017. The United States will file a notice or receipt showing the funds have been transferred to
11 Federal.

12 Dated this 7th day of March, 2023.

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14 ANDREW P. GORDON
15 UNITED STATES DISTRICT JUDGE
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